

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	931	Press
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134-135		
Dated	13.6.1883	11

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Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department,

13th June 1863.

No. 134. Read the following letter from J. W. S. WYLLIE, Esq., Under Secretary to the Government of India; to J. D. SIM, Esq., Secretary to the Government of Fort Saint George, dated Fort William, the 22nd May 1863, No. 3,285.

Home Department.

I am directed to transmit for information the accompanying copy of a Despatch from the Secretary of State for India, No. 31, dated the 17th April, and of the letter to which it is a reply, relative to the grant of furloughs to the Judges of the High Court.

Despatch from the Right Honorable Sir C. WOOD, Bart., Secretary of State for India; to His Excellency the Right Honorable the Governor General of India in Council, dated India Office, London, 17th April 1863, No. 31.

Judicial.

Your Despatch, dated 17th February (No. 9) 1863, forwarding papers relative to an application for furlough made by Mr. C. B. Trevor, a Puisne Judge of the High Court, has been considered by me in Council.

2. In reply I have to observe, that the rules for granting furloughs to Members of the Covenanted Civil Service are quite distinct from those under which furloughs are to be granted to Judges of the High Court *as such*, and that under no circumstances can a furlough be properly granted under the joint operation of both sets of rules.

3. Mr. Trevor having obtained a furlough under the Civil Service rules, would, as a matter of course, vacate his office were those rules to be enforced in his case. But as you have (though under an erroneous interpretation of the rules) assigned to him a furlough for one year with permission to retain his appointment, the permission thus accorded will not be interfered with.

4. The case of Mr. Trevor is not to form a precedent for the future, and under no circumstances will a Judge of the High Court be hereafter allowed a furlough with permission to retain his office until he has completed his period of seven years' service as a Judge.

HOME DEPARTMENT.

JUDICIAL.

No. 9 of 1863, February the 17th.

To the Right Honorable Sir CHARLES WOOD, Bart., G.C.B.,

Secretary of State for India.

We have the honor to forward the papers noted in the margin, relative to an application for

Letter from Mr. Trevor, dated the 3rd February.

Endorsement to Civil Paymaster, No. 003, dated the 7th February.

Report of ditto, No. 70, dated the 9th February.

Letter to Mr. Trevor of this date, No. 1,093.

furlough, which has been made to us by Mr. C. B. Trevor, a Puisne Judge of the High Court of Judicature for the Bengal Division of the Presidency of Fort William, and a Mem-

ber of the Covenanted Civil Service of that Presidency.

2. Mr. Trevor has been 30½ years in the service, but has never taken furlough under the ordinary rules of the Covenanted Civil Service.

3. Mr. Trevor's service as a Judge of the High Court does not entitle him to a furlough

N. B.—Mr. Trevor's service in the High Court and Sudder Court together slightly exceeds seven years.

See Memorial of Messrs. Rukma, Bayley, Trevor and Steer, forwarded with our Despatch, No. 60, dated 22nd November 1862, for your orders.

under the first of the rules forwarded with your Despatch, No. 37, dated the 15th May last. Being, however, compelled by private reasons of a very urgent nature to proceed at once to

England, he has applied for furlough for one year under the Furlough Rules applicable to Members of the Covenanted Civil Service, and he has asked that under the 5th and 8th of the High Court rules abovementioned, he may be held as entitled to retain his appointment while so absent, provided that his absence does not exceed twelve months.

*Proceedings of the Madras Government, Judicial Department,
13th June 1863.*

4. We observe that if Mr. Trevor were not a Judge of the High Court, he would not be entitled to retention of appointment while on furlough under the Furlough Rules referred to in the last preceding paragraph, as applicable to Members of the Covenanted Civil Service.

5. But the second of the rules, forwarded with your Despatch previously quoted, provides that the Judges of the High Court selected from the Covenanted or Uncovenanted Service shall have their furloughs and leaves of absence governed by those rules only so long as they continue in the High Court.

6. The third of the rules in question declares that the furlough granted under the rules, that is under Rule I, shall be exclusive of the furlough to which Judges of the High Court selected from the Covenanted Civil Service shall be entitled under the rules applicable to furloughs allowed to Members of such service.

7. This rule might be interpreted to apply only in the case of a Covenanted Civil Servant who had taken his furlough *before* being appointed to the High Court. Rule IV, however, seems distinctly to contemplate the case of a Covenanted Civil Servant who shall take both furloughs *after* his appointment to the High Court, and the use of the words "is entitled" in Rule III, appears to support this view.

8. In the rule which next follows (Rule V), it is expressly provided that a Chief Justice or Puisne Judge shall retain his office while on furlough without specifying any distinction as to the kind of furlough under which he may be absent. We think that it may be fairly inferred that a Judge selected from the Covenanted Civil Service is entitled to retain his appointment while on furlough, whether under Rule I, or under the ordinary Furlough Rules of the Covenanted Civil Service, his right to which is preserved by Rule III, provided that his absence does not in any case exceed the limit of twelve months prescribed by Rule VIII.

9. While therefore the question raised by Mr. Trevor is one which may not be free from doubt, we have decided, under the circumstances of the case, to extend to him the benefit of the literal wording of the rules as they now stand; but we submit the papers specially for your approval of our decision, and beg to request an expression of your opinion for our future guidance.

We have, &c.,

(Signed) R. NAPIER,
(") H. B. HARRINGTON.
(") H. S. MAINE.
(") C. E. TREVELYAN.

FORT WILLIAM,
The 17th February 1863.

No. 135.

ORDER THEREON, 13th June 1863, No. 931.

Copy forwarded to the Honorable the Judges of the High Court.

(Signed) J. D. SIM,
Secretary to Government.

Exd. T. McMootry.

25-931-13 June 1863.

Copy forwarded to
the Honble the Judges of
the High Court.

To Honble the Judges
of the High Court } dated 17

Copy

Presented to the Sp. Comm.

*James McManister,
D. C.*

No. 135.

ORDER THEREON, 13th June 1863, No. 531.

Copy forwarded to the Honorable the Judges of the High Co.

(Signed) J. D.

Secretary

Exd. T. McMootry.